IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

MACA.No. 264 of 2003()

OPMV.1776/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PUNALUR
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APPELLANT/ADDL.3RD RESPONDENT:

THE NEW INDIA ASSURANCE COMPANY LTD.,
REP. BY ITS ASST.ADMINISTRATIVE OFFICER,
REGIONAL OFFICE, M.G.ROAD, KOCHI-11.

BY ADV. SRI.P.R.RAMACHANDRA MENON

RESPONDENTS: CLAIMANTS & RESPONDENTS 1 & 2 RESPECTIVELY:
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1. FASEELA @ MALLIKA,
SATHEESH BHAVAN, EDAPPALAYAM, ARYANCAVU.

2. FIZIL, REP. BY MOTHER AND
NATURAL GUARDIAN, FASEELA @ MALLIKA, -DO- -DO-.

3. AFZAN (MINOR) -DO- -DO-.

4. YOUSUF LEBBA NOOHUKANNU,
CHARUVILA PUTHENVEEDU, MATHRA KARIKKAM,
DALI P.O., KULATHUPUZHA.

5. KHADIJA BEEVI, -DO- -DO-.

6. SUDHAKARAN,
SWAPNA BHAVAN, IYIKKARAKONAM, PUNALUR.

7. SUDHAKARAN, (DELETED)
S.O. SADANAM, PUNALUR.

Respondent No.7 is deleted from the party array at the risk of the appellant vide order dated 20/09/07 on I.A.No.1927/07

BY ADV. SRI.BABU JOSEPH KURUVATHAZHA
SRI.C.V.VASUDEVAN
SMT.BABY SUJATHA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 04/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.S.RADHAKRISHNAN & T.R.RAMACHANDRAN NAIR, JJ.

M.A.C.A.No.264 OF 2003

Dated this the 4th day of December, 2007

JUDGMENT

Radhakrishnan, J.

Insurance company is the appellant. Accident and insurance coverage are not disputed. The question is whether the driver of the lorry which was insured with the Insurance Company was negligent or not. First petitioner claimant is the widow and petitioners 2 and 3 are the minor children. Petitioners 4 and 5 are the parents of the deceased. Deceased was a head load worker and he had entered the platform of the lorry for the purpose of unloading boulders. He removed the iron cross bar from the body and while attempting to place the same above the cabin, it came into contact with a low lying high tension 11 KV electric line and he was subjected to electric shock and he succumbed to the same. Petitioners claim is that the accident had occurred due to the negligence on the part of the driver of the lorry who had parked lorry under the high tension electric wire. Petitioners claimed Rs. 3,00,000/- as compensation. The Tribunal awarded a sum of Rs. 1,16,700/- as compensation.

Learned counsel for the Insurance Company submits that

accident was occurred not due to the negligence of the driver of the lorry. Because of the fact that electric wire was lying low, the Electricity Board should be made liable for compensation. Tribunal noticed that the driver of the lorry had parked the vehicle under the high tension electric wire which was lying low and if he had exercised due care and caution, he could have avoided the accident and found that there was negligence on the part of the driver. He should not have parked the lorry under the electric line. Since the driver had parked the lorry under the high tension 11 KV line and deceased succumbed to electric shock while unloading iron bar from the lorry, we find that the Tribunal is right to hold that the driver of the lorry is negligent in parking the lorry under the electric wire. Learned counsel for the Insurance Company submits that liberty may be given to the Insurance Company to proceed against the owner of the lorry. Since the driver of the lorry was found negligent and vehicle was covered by insurance policy, we cannot accept that contention. In such circumstances, Appeal stands dismissed.

K.S.RADHAKRISHNAN
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

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